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CHARLES ELMORE CROPLEY

In The

Supreme Court of the United States

No. 1106

OTTO REFIOR,

Petitioner,

v.

LANSING DROP FORGE COMPANY, a Michigan Corporation, EMIL M. REFIOR, EDWARD H. REFIOR, and ALVA M. CUMMINS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Otto Refior, of Pittsburgh, Pennsylvania, pursuant to Section 240 (a) of the United States Judicial Code as amended February 13th, 1925, prays this court for the issuance of a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit to review the final opinion, order and decree of that court entered January 5, 1942 (R...).

Said opinion, order and decree affirmed a decree of the United States District Court for the Eastern Dis-

trict of Michigan in which the plaintiff's suit in this case was dismissed with prejudice, and petitioner says that he has been denied due process of law under the Fifth Amendment to the Constitution of the United States, for the following reasons:

I.

Because said order and decree dismissed petitioner's suit on the merits, although said suit was not tried on the merits, and no ground was shown for a dismissal on the merits.

II.

Because United States District Judge Frank A. Picard, before whom said cause was heard, had a fixed opinion adverse to petitioner and his case, prior to the taking of testimony, by reason whereof, he was disqualified to hear said case, and his decree should have been reversed in order to permit an actual trial of the issues, by another District Judge.

III.

Because plaintiff's application for time to file an affidavit of prejudice was denied by said District Judge; and thereafter when an affidavit of prejudice was filed, said District Judge struck the same from the record and declined to give recognition thereto.

IV.

Because the said District Judge, Frank A. Picard, restrained petitioner's trial counsel from proceeding with the trial of the case, and later permitted petitioner's trial counsel to withdraw from the case at the moment trial was to begin, all without petitioner's consent; and at the same time ordered petitioner's nonresident general counsel to proceed with the trial, although said nonresident general counsel had left the detailed preparation for trial of the case to the local trial counsel hired for that purpose and so advised the court; whereupon the trial court ordered the trial to begin within a week, and stated that he would enter an order for a bond which would have dissolved said restraining order; and failed to enter such order; and left said restraining order undetermined; and left petitioners in the position where an undetermined proceeding interfered with petitioner getting trial counsel to take his case, while at the same time, the trial judge ordered petitioner to proceed with the case. A serious and complicated situation resulted, leaving petitioner without adequate time to get to a determination on the restraining order, on the bond to be filed, on hiring new local trial counsel, on preparing the case for trial, and on questions involving possible disqualification of the District Judge, and when petitioner could not promise to go ahead with the trial before said judge in a week, petitioner's suit was peremptorily dismissed on the merits and without a trial. These proceedings were unjust and oppressive, and deprived petitioner of due process.

V.

Because said Circuit Court of Appeals affirmed the decree of dismissal on the ground that defendants had been diligent and that the petitioner had been dilatory, in bringing the case to trial.

No issue had been raised as to who had been diligent or dilatory and no opportunity was given to present evidence on any such issue. No intimation was given in advance that any such issue was to decide petitioner's rights on the merits.

A dismissal of petitioner's case on the merits on that point, without issue framed, evidence taken, or notice or knowledge that that was an issue in any form, deprived plaintiff of his property without due process of law.

VI.

Because United States Circuit Court of Appeals, 6th Circuit, erred in failing to apply this court's rule as laid down in its decisions and in place thereof applied its own rule which had no application.

REASONS WHY WRIT SHOULD BE ALLOWED.

1. The Circuit Court of Appeals for the Sixth Circuit has decided a federal question in a way in conflict with applicable decisions of this court.

Petitioner filed an affidavit of prejudice. It was held to have been filed too late because it was not on file ten days before the date set for the trial, notwithstanding the fact that the trial court's prejudice did not crystalize until proceedings had on the day the trial was to proceed. The affidavit was stricken from the files. Petitioner should have been given a reasonable time to obtain a transcript and to prepare and file his affidavit of prejudice, which was denied to petitioner. By reason thereof petitioner did not have due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

2. Because the said United States Circuit Court of Appeals for the 6th Circuit declined to apply the rule of this court as laid down in *Swan Land & Cattle Company v. Frank, 148 U. S. 603, 612,* and on the contrary, applied its own rule laid down in *Olsen v. Muskegon Piston Ring Company, 117 Fed. (2) 162,* although the latter rule had no application in the case at bar.

3. The Circuit Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the United States District Court for the Eastern District of Michigan, as to call for this court's power of supervision. The petitioner had the right to have his suit heard by an impartial court whereas the

United States District Judge before whom petitioner's suit was to be heard and decided, had a fixed opinion as to petitioner, adverse to petitioner, and had prejudged petitioner's case, had prejudged petitioner, and had prejudged petitioner's general counsel, all adversely to petitioner and before trial, and thereupon summarily dismissed petitioner's case with prejudice, with the result that petitioner did not have due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

4. The United States Circuit Court of Appeals for the 6th Circuit affirmed the District Court's decision, notwithstanding the District Court had taken proceedings which were unduly prejudicial to petitioner's rights and proceedings which were unjust and oppressive, in that said District Court (A) restrained petitioner from having new trial counsel proceed with trial, until petitioner would pay a large sum of money on a disputed claim for fees then in litigation; (B) then ordered a bond in lieu of said money payment; (C) did not settle the form of the bond; (D) left the matter of trial counsel for the trial of petitioner's case, in confusion; (E) at the moment trial was to begin, permitted petitioner's trial counsel who were ready for trial, to withdraw without petitioner's consent; (F) then ordered the case to go to immediate trial; (G) and after protest by petitioner, gave petitioner a week's time to go to trial, although there were eleven major matters to prepare for trial, and said court left the matter of the restraining order, cash deposit, bond, and new trial counsel unsettled, and still left petitioner helpless to get other trial counsel, and then immediately ordered dismissal of petitioner's suit because petitioner could not, under the circumstances, promise to go ahead with the trial before said District Judge in a week. By reason whereof petitioner did not have due

process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

5. The United States Circuit Court of Appeals for the Sixth Circuit in affirming the lower court's decision dismissing petitioner's case with prejudice, held that such prejudice would be inferred. The court said "actual injury may either be shown or inferred from the lapse of time if the lapse be great." Prejudice to defendant was then inferred by the court from lapse of time during the pendency of the suit. No such inference was justified on the facts.

Furthermore, the record shows that the petitioner, himself, was trying every means to bring his case to trial. Under such circumstances the pendency of the case at bar over a period of years would not and could not raise an inference of legal prejudice to defendants, which justified a dismissal, and certainly not a dismissal on the merits. Such dismissal on the merits was a denial of due process within the meaning of the Fifth Amendment to the Constitution of the United States.

6. Because the United States Circuit Court of Appeals, for the 6th Circuit, in affirming the District Court's decision, dismissing petitioner's suit *on the merits*, decided said cause on the basis of supposed delay in having the case tried, when that question was not a controversy on which evidence was called for or submitted, or on which there was notice to petitioner that such an issue was being considered by the court, as a basis for dismissal of petitioner's suit on the merits.

Under such circumstances, petitioner did not have that reasonable opportunity to meet the supposed issue involving the question of diligence or dilatory action, and a dismissal of petitioner's suit on the merits deprived petitioner of due process of law.

Transcript of the record in this case including the proceeding in the said Circuit Court of Appeals for the Sixth Circuit is furnished herewith in accordance with Rule 38 of this court.

Wherefore petitioner prays:

That this honorable court grant a writ of certiorari directed to the United States Circuit Court of Appeals for the Sixth Circuit, requiring that court to certify full and complete transcript of the record and proceedings in the above entitled cause to this honorable court for its review and determination.

Eastern District of Michigan—ss.

Otto Refior, being duly sworn, deposes and says that he is the petitioner in the foregoing petition for writ of certiorari;

That he has signed said petition; and that the facts therein stated are true.

Otto Refior.

Subscribed and sworn to before me

this.....day of March, 1942.

....

Notary Public,
Wayne County, Michigan.

My commission expires.....

ALEXANDER H. SCHULLMAN,
McLEOD, FIXEL & FIXEL,
Attorneys for Appellant.

CERTIFICATE.

We hereby certify that we are the attorneys for the petitioner herein, Otto Refior; that the allegations of fact contained in said petition are true and that said petition in our opinion is well founded in law as well as in fact, and is presented in good faith.

ALEXANDER H. SCHULLMAN,
McLEOD, FIXEL & FIXEL,
Attorneys for Appellant.

STATEMENT OF MATTERS INVOLVED.

GENERAL STATEMENT.

Lansing Drop Forge Company is a Michigan manufacturing corporation, with an authorized capital stock of $125,000.00 Common shares and $55,000.00 Preferred shares.

Petitioner, Otto Refior, and defendant, Emil M. Refior, each own one-half ($62,500.00) of the Common stock of the Lansing Drop Forge Company. Defendant, Edward H. Refior, holds $55,000.00 worth of the Preferred stock of the Lansing Drop Forge Company. (His right to hold this stock for his own use is disputed.) Petitioner resides in Pittsburgh, Pennsylvania, and defendants reside in Lansing, in said Eastern District of Michigan (R. 2).

Petitioner's suit was brought in the District Court of the United States for the Eastern District of Michigan, on the ground of diversity of citizenship (R. 2). Petitioner's suit is to recover losses sustained by the corporation and by himself through mismanagement and through alleged misappropriation of corporate funds by the individuals named as defendants (R. 2).

The defendants, Emil M. Refior and Edward H. Refior are the managing directors (R. 2, 3), and defendant Alva M. Cummins is acting as the secretary of the corporation (R. 41). Although his election is alleged to be irregular R. (41).

Trial of the case was commenced in 1936 (R. 112), but only a limited amount of testimony was taken, when the case was postponed in order to first get certain accounting data (R. 113).

Due to the congested condition of the docket of the District Court of the United States for the Eastern District of Michigan (R. 114, 115), a trial date for the case was not finally set by the court until the close of 1940. There were several adjournments between the period from October, 1940 to March 1941, which adjournments were either for the accommodation of counsel on each side of the litigation or on account of the docket, or on account of the needs of the court (R. 114, 115).

On January 8th, 1941, the case was called and local counsel for petitioner verbally consented in court to a reference to a master for the taking of the proofs (R. 116). This was contrary to previous instructions of petitioner to the local counsel (R. 147, 152, 153), and as a result, petitioner caused an application to be filed to revoke the reference, and requested that the trial be had before the District Judge in open court (R. 80, 10).

While the proceedings relating to said reference were pending, the court issued a restraining order, restraining petitioner's trial counsel from acting further in the case, on the ground that another firm of lawyers, Griffin, Heal & Emery, who had previously worked on the case for petitioner, had filed a petition claiming that fees were owing to them (R. 97). A bond to the amount of the fees claimed by Griffin, Heal & Emery was thereupon filed by petitioner with the Aetna Casualty and Surety Company as surety, to await an adjudication as to said fees (R. 137, 138).

In the course of the proceedings on said Motion to revoke the reference, and on said fee matter, the trial judge made various charges against the petitioner and his counsel, among others, in substance that petitioner had deceived the court on the reference matter (R. 228, 229); had failed to pay his counsel (R. 153, 163); had substituted other counsel without paying for previous counsel (R. 153); was guilty of unethical conduct (R. 153, 163); had approved certain actions of petitioner's general counsel which included a charge that said general counsel tried to fool the court (R. 153); was guilty of sharp practice (R. 177); was unethical (R. 153); and had made a false statement of fact on a material matter to the court (R. 146, 147). These charges are denied by petitioner's general counsel and are denied by petitioner. These charges or other charges of dishonesty were repeated in substance at three different hearings. See May 12th, 1941, proceedings (R. 146), June 17, 1941, morning (R. 180), June 17th, afternoon (R. 197).

Thereupon the District Judge further stated that he had discussed the case with another District Judge and had unwillingly come to the opinion that the plaintiff did not want to try his case (R. 193).

There was no evidence to substantiate the charges made or the opinion formed.

Petitioner thereupon requested that the court disqualify itself (R. 177) but the District Judge declined do so (R. 177).

Thereupon an application was made by petitioner's general counsel for leave to file a comprehensive affidavit of prejudice and this application was denied (R. 177).

This motion was characterized as "sharp practice" (R. 177).

Thereafter petitioner's counsel filed an affidavit of prejudice (R. 201 to 213) and said affidavit of prejudice was stricken from the files by said District Judge (R. 222).

Petitioner says there was no basis for the dismissal of his suit with prejudice or for the dismissal of his suit at all.

Petitioner further says that the restraining order issued against petitioner's trial counsel, by which petitioner's trial counsel was restrained from proceeding with the trial, should have been dissolved and a necessary and suitable order in connection with the bond to be furnished to Griffin, Heal & Emery, should have been entered, so that petitioner could proceed with his case with adequate trial counsel and without the confusion and hindrance attendant on the existance of said restraining order, and an unsettled bond situation which prevented petitioner from hiring new trial counsel. The restraint and the unsettled bond made it impossible for petitioner to go ahead with the trial, and created a situation which was unjust and oppressve.

The District Judge dismissed petitioner's case "with prejudice" notwithstanding the case was not tried on its merits, and notwithstanding no legal prepjudice to defendants was shown.

The case was dismissed on the basis that defendants had been diligent and petitioner had been dilatory, when that was not a known issue in the case, was not a subject

of inquiry or evidence, and the District Judge's conclusion is not supported in fact, or on the record. Furthermore the parties themselves approved an order to the effect that, in case either side failed to go ahead on June 17th, 1941, the case would be treated as a default case (R. 121).

The United States Circuit Court of Appeals affirmed the District Court's decision dismissing the bill of complaint with prejudice.

STATEMENT OF MATTERS INVOLVED.

SPECIFIC STATEMENT.

The District Judge had a personal bias and prejudice against petitioner and adverse to petitioner, and that bias and prejudice disqualified the District Judge. That bias and prejudice took shape as a fixed opinion adverse to petitioner. That opinion appeared in four matters involved in petitioner's case as follows:

(1) January 8, 1941, reference to a Master to take testimony, and motion to revoke reference;

(2) March, 1941, petition of Griffin, Heal and Emery against petitioner, for fees claimed to have been earned by them, and a consequent restraining order restraining petitioner's trial counsel from trying the case;

(3) Denial to petitioner of the right to file an affidavit of prejudice in order to disqualify said trial judge, and

(4) The dismissal of the petitioner's case with prejudice without a trial on the merits, on the theory that defendants were diligent and petitioner was dilatory, when that was not an issue in the case, and no opportunity was given petitioner to prove he was diligent in trying to obtain a trial.

The January 8, 1941, Reference.

In the absence of petitioner and his general counsel the latter being a resident of California, petitioner's local trial counsel consented to a reference to a Master for the taking of testimony. This was contrary to local counsel's instructions. As soon as petitioner learned of this reference, his general counsel made a motion to revoke the reference for the reason that the case involves fraud issues and the credibility and veracity of the parties to the suit, and because the case is not such a case as should be referred under Rule 53-b of Federal Rules of Civil Procedure. Without hearing any evidence, the trial court said in substance:

(a) That petitioner's suit is vexatious (R. 193, 194).

(b) That petitioner had "had eight different firms of attorneys" at different times, with resultant delay of trial to be inferred (R. 163, 187, 188).

(c) That petitioner and his general counsel were guilty of improper practices (R. 147, 152, 153, 154).

(d) That petitioner had deceived the court (see statement of court R. 229, 230).

(e) That petitioner's counsel had not told the truth (R. 146, 147).

(f) That petitioner and his general counsel were guilty of a breach of ethics (R. 153, 197, 198).

(g) That petitioner condoned the alleged misconduct of his general counsel (R. 187).

(h) The District Judge then stated that he had discussed the case with another District Judge and that he had unwillingly arrived at the opinion that petitioner did not want to try his case (R. 193, 194).

The charges against petitioner are serious; they include fraud, unethical conduct, dishonesty and that petitioner's suit is vexatious. A litigant should not be required to try his case before a judge who entertains such opinions about the litigant.

On these facts, the District Judge was clearly disqualified to try the case, on the ground of prejudice.

Re Petition Of Griffin, Heal and Emery For Attorney Fees, and Consequent Order Restraining Petitioner's Trial Counsel From Trying Petitioner's Case.

The firm of Griffin, Heal & Emery had undertaken in writing to assume the responsibility of preparation and trial of petitioner's case. When the case had reached the point where it was about to be called for trial, said attorneys declined to accept the responsibility of the trial, compelling petitioner to hire other counsel, at additional expense. Petitioner had paid said Griffin, Heal and Emery a portion of their account. By reason of their breach of contract, he was obliged to pay other trial counsel for the preparation for trial.

(a) The District Judge restrained the new trial counsel from proceeding with the case (R. 97,98).

(b) Ordered a deposit of three thousand two hundred forty-five ($3,245.00) dollars cash, to cover any award of fees which might be made to Griffin, Heal & Emery by a court of competent jurisdiction (R. 97, 98).

(c) Petitioner requested permission to file a surety bond instead of depositing cash.

(d) Grffin, Heal & Emery consented that a bond could be substituted for the cash deposit, with the same terms that covered the order for the cash security (R. 164).

(e) A bond was filed by petitioner's counsel (R. 137) and it followed the conditions of the order of the court as previously made when the cash deposit was ordered (R. 97, 98).

(f) Although Mr. Griffin agreed in open court to accept such a bond, when the bond had been filed, he demanded changes (R. 168, 169).

(g) Petitioner consented to the desired changes, in open court (R. 175), whereupon the court said:

> "The court will prepare an order withdrawing that bond and substituting a new one in its place and clean it up so that there will be no question and that you will have this court hear it" (referring to this case) (R. 175).

(h) No such order was drawn by the court or entered by the court (R. 137, 138). The changes to go into the

substituted bond were never fixed by court order (R. 137, 138).

(i) Griffin, Heal and Emery thereafter did not accept the proposed changes and declined to accept the original bond (R. 212).

In the course of these proceedings on May 12, 1941, the court charged petitioner's counsel with "unfair" and "unethical" practices. We quote the record as follows:

> "The Court: * * * I didn't know at that time that you had resorted to what I thought were unfair ethical practices in not paying a local attorney and getting somebody else (R. 153).
>
> "Mr. Schullman: Now, I take issue again with the last remarks about the unethical situation" (R. 153).

The facts are that Mr. Schullman never hired any counsel for petitioner (R. 242). Petitioner himself had retained Messrs. Atkinson and Donnelly as trial counsel, after explaining to Mr. Atkinson what had taken place with Griffin, Heal and Emery and their alleged breach of their contract with petitioner.

The court further said:

> "All I am interested in is to know that clients can't come in this court and run from one attorney to another, and not pay the fellow they had in the first place" (R. 163).

The court in effect charged that petitioner had changed attorneys without paying his just obligations to them (R. 163), which charge is without foundation in fact. This

charge was based on the unproved allegations of the petition filed by Griffin, Heal & Emery, which allegations are denied under oath, by answer duly filed, on which there has been no trial (R. 198-202).

The court then granted permission to petitioner's new trial counsel, Messrs. Atkinson and Donnelly, to withdraw from the case (R. 178, 179), without consulting petitioner, and this took place at the moment set for the beginning of the trial of the case at bar.

The following colloquy also took place in proceedings had on June 17, 1941, the date of such withdrawal:

> "The Court: I can decide this case, although I prefer not to."
>
> "Mr. Schullman: Well, your honor, then in view of that, I ask that this court, in view of the remarks made to counsel and in view of the remarks with which counsel disagrees, I ask that the court disqualify itself from these proceedings, and I should like to, with the permission of the court, file a comprehensive affidavit setting forth everything that has occurred since I have been here in it" (R. 177).
>
> "The Court: The court denies the motion, and too, the court considers it another evidence of counsel's attempt to resort to what some people might call rather sharp practice" (R. 177).
>
> "Mr. Schullman: Your honor, may I merely take an exception to the last remarks made by the court as to sharp practices"? (R. 177).

A week's time was then offered to petitioner's general counsel who stated to the court that "the entire trial of

the case has been left at all times to local counsel and has been so left to Mr. Atkinson" * * * (R. 180).

The restraining order was not dissolved. Griffin, Heal and Emery did not O. K. the bond for the claimed fees. The court did not fix the terms of the new bond as the court stated it would do. The case was ordered to go to trial in a week, but was not put into a condition which would make it possible to hire trial counsel for such trial.

The restraining order and the bond situation presented procedural difficulties which stopped the hiring of new trial counsel. The trial of the case, with eleven major subjects of litigation, and questions related to the possible disqualification of the trial judge, also presented serious difficulties which prevented getting new trial counsel ready for trial in a week's time. When petitioner's counsel so advised the District Judge, the judge peremptorily dismissed petitioner's suit and dismissed it "with prejudice" although no legal prejudice to defendant was shown (R. 138, 139).

QUESTIONS PRESENTED.

First: Was dismissal with prejudice without any trial on the merits in the case at bar and without any evidence of prejudice, a deprivation of due process at law, under the circumstances in the case at bar?

Second: Did the United States Circuit Court of Appeals for the 6th Circuit, err in refusing to apply this court's rule as laid down in *Swan Land & Cattle Company v. Frank, 148 U. S. 603, 612,* and in place thereof applying a different rule as laid down in *Olsen v. Muskegon Piston Ring Company, 117 Fed. (2) 162.*

Third: Was the trial judge's order requiring that petitioner proceed to trial without his trial counsel, allowing said trial counsel to withdraw, and restraining the hiring of new trial counsel, so oppressive and unjust as to deprive petitioner of due process of law?

Fourth: Was the trial judge disqualified on account of bias against petitioner, so as to deprive petitioner of due process of law?

Fifth: Did the trial court deprive petitioner of due process, by striking petitioner's affidavit of bias and prejudice from the files and disregarding same?

Sixth: Was the court's decree, based on the proposition of diligence as between the parties, a deprivation of property without due process, there being no issue framed on the question of diligence, no testimony taken thereon, and no opportunity to meet any such issue?

ASSIGNMENT OF ERRORS.

Now comes the said Otto Refior, appellant in the above entitled cause and files the following assignment of errors upon which he will rely in the prosecution of the appeal herewith petitioned for in said cause, being an appeal from the decree of the United States Circuit Court of Appeals, 6th Circuit, entered on the January 5th, 1942:

1. That said court erred in affirming a decree in which the United States District Court for the Eastern District of Michigan, dismissed petitioner's suit with prejudice, when there was no trial of the issues on the merits and no legal prejudice to defendants, thereby depriving petitioner of his property without due process of law.

2. That said court erred in affirming a decree of the United States District Court for the Eastern District of Michigain, dismissing petitioner's suit with prejudice, which action was in conflict with the rule laid down by this court in *Swan Land & Cattle Company v. Frank, 148 U. S. 603, 612.*

3. That said court erred in affirming the order of the said United States District Court by which petitioner was ordered to proceed in a week before the said District Court or have his case dismissed; the said District Court had restrained petitioner from hiring trial counsel; said District Court then ordered a bond to dissolve said restraint, and after bond was filed, it was not approved so as to permit petitioner to hire trial counsel; and said District Court permitted attorneys who had been representing petitioner as trial counsel, to withdraw without petitioner's consent, whereupon when petitioner advised the court that he required more time than a week to

clear up questions relating to the restraining order, form of the required bond, the question of disqualification, and the hiring of trial counsel who could prepare eleven major issues in the case in time to begin the trial in a week, said District Judge dismissed petitioner's case on the merits without a trial or a hearing of the evidence. The affirmance of the decree of said United States District Court, deprieved petitioner of his property without due process of law.

4. That said court erred in affirming the order of the said United States District Court in striking petitioner's affidavit of bias and prejudice from the record when said affidavit should have been allowed to stand, and in refusing to order the District Judge to disqualify himself.

5. That said court erred in affirming the decree of the said United States District Court which District Court dismissed petitioner's suit on the merits, and decided said cause among other grounds, on the basis of supposed delay in having the case tried when that question was not an issue in the case; that no evidence was called for or submitted on that question, and no notice was given to petitioner that such an issue was being considered by the court as a basis for dismissing petitioner's bill of complaint on the merits, by reason whereof petitioner was deprived of his property without due process of law.

WHEREFORE, petitioner prays that said judgment may be reversed and for such other and further relief as to the court may seem just and proper.

ALEXANDER H. SCHULLMAN,
McLEOD, FIXEL & FIXEL,
Attorneys for Petitioner.

Dated March 28th, 1942.